

EXHIBIT G

Exhibit G - NS's Factual Contentions

In addition to the Stipulation of Undisputed Facts, Defendant Norfolk Southern Railway Company's ("NS") factual contentions include the following:

1. NS and CSX are Class 1 railroads that compete for the transportation of international intermodal containers delivered to or from ports on the East Coast, including the Port of Virginia (the "Port").

2. The Port has two primary marine terminals: Virginia International Gateway ("VIG") and Norfolk International Terminal ("NIT"). The Port's third terminal, Portsmouth Marine Terminal ("PMT"), has been used for the transportation of international intermodal containers in the past.

3. The East Coast ports compete with one another and ports on the West Coast for international intermodal "discretionary cargo," which is cargo that can move through more than one port to its ultimate destination – in this case, Midwest locations.

4. The Port's main competitor for discretionary international intermodal cargo is the Port of NY/NJ, which is the East Coast port with the largest intermodal container business.

5. Ocean carriers have at least one port option besides the Port for all major Midwest destinations.

6. In addition to competing with each other, CSX and NS compete with trucks, or "drayage", for the movement of international intermodal containers at the Port.

7. NS has a competitive advantage over CSX at the Port through years of investment and planning, whereas CSX has a competitive advantage over NS at the Port of New York/New Jersey. These respective competitive advantages are the result of decades of rigorous competition and investment by both railroads into their respective infrastructure at different ports.

8. Despite NS's natural advantages at the Port, CSX's share of international intermodal container movements through the Port has increased significantly between 2009 and 2021.

9. NPBL is a terminal switching railroad that operates in the cities of Norfolk, Portsmouth, Chesapeake, Virginia. NPBL's primary business is to interchange, or switch, freight cars for other railroads.

10. NPBL is not a competitor to either NS or CSX for the movement of international intermodal containers.

11. NS and CSX are the sole shareholders of NPBL, with 57% and 43% respective ownership interests.

12. Pursuant to an agreement between NPBL's shareholders, NS is entitled to appoint three directors to NPBL's board of directors, and CSX is entitled to appoint two directors. NPBL's president is the only other voting director on the board.

13. NPBL's business and affairs are governed by an Operating Agreement (the "Operating Agreement").

14. The Operating Agreement requires that NPBL fix a "uniform rate" – or "switch rate" – for the movement of freight cars, regardless of distance.

15. The Operating Agreement requires that the switch rate be set at an amount that generates enough revenue to cover NPBL's costs and allows a six-percent dividend to be paid to NPBL's shareholders.

16. In 2010, NPBL set its switch rate at \$210 per car to cover the estimated per car costs of NPBL. The switch rate has remained at \$210 per car to allow NPBL to cover its costs, which averaged \$220.38 per car between 2010 and 2020.

17. NPBL's \$210 per car switch rate is reasonable, is not artificially inflated, and was not set for an improper purpose.

18. NS owns the tracks to and from NIT. NPBL has trackage rights over NS's tracks, which allows NPBL to access NIT by going into and out of the northern gate at NIT.

19. CSX is not foreclosed from accessing NIT. CSX has the option to use the on-dock facilities at NIT via the NPBL or to use drayage to transport international intermodal containers to and from NIT.

20. Except for a few instances in 2015, CSX has chosen to use drayage at NIT instead of using the on-dock facilities via the NPBL.

21. Drayage is a substitute to the on-dock facilities at NIT.

22. The Port actively directs CSX-aligned ocean carriers to VIG and NS-aligned ocean carriers to NIT. CSX encourages the Port to direct as many of its aligned ocean carriers to VIG as possible. As a result, most of the international intermodal containers that CSX moves to or from the Port are brought to VIG.

23. NPBL has never refused to transport CSX's international intermodal containers to or from NIT. The last time CSX asked NPBL to transport containers to and from NIT was in 2015.

24. In 2015, NPBL worked with NS to create an operations plan that enabled NPBL to move nine trains to and/or from NIT on behalf of CSX. NPBL moved every train that CSX asked it to move in 2015.

25. In February 2018, CSX began planning for the instant litigation.

26. On March 23, 2018, CSX sent a proposal (the "2018 Proposal") to NPBL seeking to enter a contract with NPBL relating to NPBL's movement of CSX's international intermodal containers to and from NIT.

27. The 2018 Proposal proposed a “per car” switch rate that (a) only applied to the movement of CSX’s international intermodal containers to and from Berkley Yard to NIT, (b) was substantially lower than the existing, uniform \$210 per car switch rate, and (c) would be memorialized in a private contract between CSX and NPBL. As a result, the proposed rate did not comply with the uniform rate requirement in NPBL’s Operating Agreement.

28. If the proposed per car rate had replaced NPBL’s uniform \$210 per car switch rate and thus was applied to all of NPBL’s line haul switching, there was significant risk that it would have caused NPBL to lose such significant revenue that NPBL would not have been able to cover its costs of operation.

29. Upon receipt of the 2018 Proposal, NPBL’s president, Cannon Moss, promptly discussed the proposal with CSX and met with the Port and NS to discuss CSX’s operational plan included in the proposal.

30. The 2018 Proposal was discussed at the April 18, 2018 NPBL board of directors meeting, however, no director made a motion to vote on the proposal at the meeting or any subsequent meeting of the board. Therefore, NPBL never rejected the 2018 Rate Proposal.

31. In 2008, the NPBL board of directors approved, without objection, the decommissioning of the track formerly located between NS Junction and Carolina Junction in the Berkley area of South Norfolk (the “Diamond Track”) because it had not been used for at least two years.

32. The Surface Transportation Board approved the discontinuance of NPBL’s service and trackage rights over the Diamond Track, certifying that no local traffic had moved over the line at least two years, effective June 14, 2008. CSX did not object to the removal of the Diamond Track, despite opportunity to do so.